IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1464 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JANMOHMAD HASANBHAI KURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1464 of 2001

MS JAYSHREE C BHATT for Petitioner No. 1

MR KT DAVE AGP FOR Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/08/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), the Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated January 24, 2001 detained the petitioner-detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority found the petitioner indulging in illegal activities detrimental to the maintenance of public order and, therefore, it was indispensable on his part to detain the petitioner and, therefore, the order of detention came to be passed. The order of detention manifests that against the petitioner an offence came to be registered on January 23, 2001 with Shahpur Police Station vide CR No. 3011 of 2001 for the commission of the offences under the Prevention of Cruelty to Animals Act, 1960 and, therefore, the petitioner is detained by the detaining authority.

3. By filing this petition under Article 226 of the petition, the petitioner has assailed the order of detention on various grounds and prayed to issue appropriate writ or order quashing and setting aside the order of detention passed against him and prayed to set him at liberty forthwith.

4. Though the petitioner has assailed the order of detention on various grounds, Ms. Bhatt, learned advocate for the petitioner has restricted her arguments only to the point that the subjective satisfaction recorded by the detaining authority in exercise of his powers under section 9 (2) of the Act cannot be considered as genuine. To bring home her submission, reliance is placed on the statements of two witnesses which were recorded on January 23, 2001 and verified by the detaining authority on January 24, 2001 and on the same day the order of detention came to be passed. Therefore, according to her, it can be said that the detaining authority has not exercised the powers under Section 9 (2) of the Act genuinely and properly as he had no sufficient time to examine the statements of the witnesses.

5. Mr. K.T. Dave, learned AGP has opposed this petition. However, he does not dispute the factual aspect of recording of statements on January 23, 2001 and verification of the statements on January 24, 2001 and on the same day the order of detention came to be passed.

6. Similar question arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat, 1993 (2) GLR 1659 where the statements of the witnesses were recorded on 16.10.1992 and order of detention was passed on 17.10.1992 and the Division Bench of this Court has observed that the power under Section 9 (2) of the Act was improperly exercised and was held to

be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and, therefore, the detention order was quashed. Applying the principles laid down by the Division Bench of this Court in the case of Kalidas (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. At the cost of repetition, be it stated that in the present case also the statements of the witnesses were recorded on January 23, 2001 and they were verified on January 24, 2001 and the order of detention came to be passed immediately on the same day. Therefore, the order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated January 24, 2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

30.8.2001. (A.M. Kapadia, J.)

(karan)